

## REMARKS

In accordance with the above amendments, claim 73 has been amended and claim 74 has been canceled. Thus, claims 60-67, 69-71, 73, 75 and 78-81 remain under consideration in this application. No claim has yet been allowed.

### **Claim Rejections - 35 U.S.C. § 112**

Claims 60-67 and 78-81 have been rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. In the Examiner's view, the recitation of "a first amount of carbon in an activated state" and "a second amount of carbon that has been pre-incorporated with a species..." constitutes new matter as it recites limitations which were not clearly disclosed in the specification as filed and now change the scope of the instant disclosure as filed. Such limitations recited in the present claims are seen to introduce new concepts and thus violate the written description requirement of the first paragraph of 35 U.S.C. § 112. This is characterized as a new matter rejection. This rejection is respectfully traversed.

In this regard, the Examiner is respectfully requested to consult applicants' original specification as originally submitted, particularly, for example, on page 5, lines 14-17, and lines 21-25. Lines 21-25 read as follows:

"An option that can be selectively utilized in the present invention to further prevent abuse with the use of extraordinary solvents, is the incorporation of either antagonist or irritant compounds into a portion

of the binding agent mix that will also be extracted."  
(Emphasis added)

Thus, if an amount of binding agent is provided in which an irritant compound is incorporated into a portion of the binding agent, there is clearly a first amount of the binding agent without the antagonist or irritant compound and a second amount of the binding agent that contains the antagonist or irritant compound. Activated carbon is clearly identified as a preferred binding agent throughout the specification.

Therefore, applicants believe that the language of the claims is more than sufficiently supported in the original specification and this demonstrates that one skilled in the art would recognize that they were in possession of the claimed invention as a whole at the time of filing and no new matter has been introduced.

Reconsideration and withdrawal of this rejection is respectfully requested.

**Claim Rejections - 35 U.S.C. § 103**

Claims 60-67 and 78-81 have been rejected under 35 U.S.C. § 103 as being unpatentable over Marcenyac et al (US Patent Publication 2004/0146547) in view of Hekal (USPN 6,279,736) and Sackler (US Patent Publication 2003/0068392). This rejection is respectfully traversed.

As has been thoroughly previously explained, the Marcenyac et al reference fails to disclose or suggest a disposal device or

technique that deactivates a medicament on contact during a normal disposal process. The reference further teaches the use of materials such as dyes, etc., as part of an anti-abuse system and these materials clearly are incompatible with the use of activated carbon as a deactivating agent inasmuch as they will be preferentially absorbed and thereby inhibit or prevent the activated carbon from absorbing the abusable substance of interest. Furthermore, the reference fails to disclose or suggest the use of activated carbon either with or without a pre-incorporated irritant or antagonist species. The present applicants maintain that one skilled in the art would be led away from using activated carbon in the system of Marcenyac et al.

The Hekal reference which has been combined with Marcenyac as disclosing an absorption agent is believed to be far afield and completely unrelated to the present invention. Hekal teaches a barrier pack for dispensing oral medications which contains an absorbing agent. The barrier pack includes hollow medicament containers that include an absorbing agent on a surface which may be a desiccant or may contain, among many other disclosed agents, "activated carbon". As indicated at column 2, lines 45-49, the absorbing agent is:

"chosen so as to achieve absorption of the desired vapor or gas for the desired end use (e.g. absorption of moisture, oxygen, carbon dioxide, nitrogen or other undesired gases or vapors)". (Emphasis added)

The Hekal reference fails to teach "activated carbon" as a binding agent for binding abusable substances. The reference further fails to contain any motivation whatsoever for singling out activated carbon in particular. Thus, it is submitted that Hekal fails to teach or suggest the use of activated carbon in the environment of the present invention and, in any event, one skilled in the art would not be led to combine it into the anti-abuse substance of Marcenyac et al.

Sackler teaches the combination of antagonists or irritants with medicaments in a transdermal delivery system. That reference, however, does not suggest the combination of such agents with activated carbon nor does it teach or suggest the use of such agents in a deactivating system separate from the transdermal patch. Thus, Sackler also fails to teach or suggest elements clearly missing from Marcenyac et al and Marcenyac et al in combination with Hekal that would lead one to the presently claimed invention.

Given the above, it is respectfully requested that the Examiner reconsider his position and withdraw this rejection.

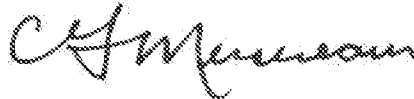
It is further noted that the Examiner has failed to treat claims 69-71 and 73-75 in any respect in this Action. For the reasons stated with respect to the other claims, however, applicants submit that these claims also are patentable and in condition for allowance.

Given the above amendments, taken together with the remarks herein, the Examiner is respectfully requested to reconsider and withdraw the rejections and allow all of the claims.

Should any issues remain which, in the opinion of the Examiner, could be resolved by telephone interview, he is invited to contact the undersigned attorney at his convenience in order to discuss and resolve same in order to expedite prosecution of this application.

Respectfully submitted,

NIKOLAI & MERSEREAU, P.A.

A handwritten signature in cursive script, appearing to read "C. G. Mersereau".

C. G. Mersereau  
Registration No. 26,205  
900 Second Avenue South  
Suite 820  
Minneapolis, MN 55402  
Telephone: (612) 339-7461